



STATE OF NEW MEXICO  
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DR. VERONICA C. GARCÍA  
SECRETARY OF EDUCATION

BILL RICHARDSON  
Governor

March 12, 2004

**Memorandum**

TO: Superintendents, Special Education Directors, REC Directors

FROM: Sam Howarth  
State Director of Special Education

RE: Requests for Exemption from the 1.0 Percent Rule

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Students in New Mexico with the most significant cognitive disabilities have the option of taking, as appropriately determined by their respective IEP teams, the appropriate New Mexico Alternate Assessment in place of other statewide assessments, such as the Terra Nova. Up to 1.0 percent of the advanced and/or proficient scores on these alternate assessments can be reported as proficient for the purposes of calculating adequate yearly progress (AYP). Alternate assessments that exceed this 1.0 Percent Rule at the district level will be considered as not proficient.

The New Mexico Public Education Department (NMPED) recently received guidance with regard to establishing a procedure by which the NMPED can request an exemption from the 1.0 Percent Rule from the US Department of Education. The NMPED does not believe that such an exemption is required for New Mexico in the 2003-2004 school year.

The guidance also encourages the NMPED to establish a protocol for local educational agencies (LEAs) to use when requesting exemptions from the 1.0 Percent Rule from the NMPED. This memorandum serves the purpose of establishing procedures by which LEAs can make such a request for exemption from the NMPED.

In order to make a request from the NMPED for exemption from the 1.0 Percent Rule, the LEA must provide the following information.

**Request for Exemption from 1.0 Percent Rule Checklist**

District: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
\_\_\_\_\_ E-mail address: \_\_\_\_\_

A **written explanation** of circumstances that result in more than 1.0 percent of all students throughout the LEA having the most significant cognitive disabilities. **(Please Attach)**

Data, listed by title below, showing the incidence rate of students with the most significant cognitive disabilities in the LEA. Suggested data include data on how students with the most significant cognitive disabilities are defined, confirmatory data demonstrating that the LEA has programs that attract students with the most significant cognitive disabilities, a total population tested in the LEA if the LEA's reason for requesting exemption is due to its small size and/or information indicating that students' participation in such assessments is made on a case-by-case basis. **(Please Attach)**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Information showing how the LEA has implemented alternate achievement standards (summary of 34 CFR §200.6(a)(2)(iii)): **(Please Attach)**

- Guidelines for individualized education program (IEP) teams to determine when a child's significant cognitive disability justifies the alternate assessment based on alternate achievement standards. (Utilize the *Addendum for Determining Eligibility for the New Mexico Alternate Assessment*)
- Information about how parents are informed that their child will be assessed based on alternate achievement standards, including information about the implications of participation in the alternate assessment—especially because the State has identified consequences for students based on assessment results i.e. “high stakes” testing.
- Documentation of the numbers and percentages of students in the LEA taking:
  - 1) An alternate assessment based on alternate achievement standards
  - 2) General assessments (with or without accommodations)
- Documentation that describes how students with the most significant cognitive disabilities are included in the LEA's general curriculum.
- Documentation of efforts taken by the LEA to develop, disseminate information on, and promote the use of appropriate accommodations.
- Documentation of efforts (such as professional development or guidance documents) taken to ensure that teachers and other staff know how to administer assessments, including appropriate use of accommodations.

The NMPED expects that exceptions will be granted only for miniscule increments above the 1.0 percent cap and that exceptions will be granted only for prescribed durations of time, depending upon the specific circumstances that justify the exception.

The LEA **must** provide evidence, according to the requirements listed on the checklist, that explains why more than 1.0 percent of all students in its tested grades have the most significant cognitive disabilities. Further, as NMPED considers whether to allow any exceptions, we will be mindful of how individual LEA exceptions will affect the overall 1.0 percent cap that applies at the State level. The US Department of Education will not grant an exception to a State based on our liberal granting of exceptions to LEAs.

If you wish to apply for this exemption for your LEA, please utilize the checklist and mail all required information **by June 1, 2004** to:

Dan Farley  
Special Education Office  
New Mexico Public Education Department  
300 Don Gaspar  
Santa Fe, NM 87501-2786

If you have further questions about this new procedure, please contact Dan Farley at 827-6541 or [dfarley@sde.state.nm.us](mailto:dfarley@sde.state.nm.us). Thank you for helping to ensure excellence and equity in New Mexico schools.

CC: Dr. Don E. Watson, Assistant Secretary, Accountability and Assessment  
SEO Consultants